Supreme Court, U.S.
FILED

021382 JAN 9 2003

No._____

In the
SUPREME COURT OF THE UNITED STATES
October Term, 2002

STEPHEN FISHER and NANCI FISHER,

Petitioners,

vs.

NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, TAX APPEALS TRIBUNAL and JAMES WEXLER, COMMISSIONER OF THE NEW YORK STATE DEAPARTMENT OF TAXATION AND FINANCE,

Defendants

Petition For Writ Of Certiorari To The
New York State Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

Stephen Fisher
Petitioner, pro se
1819 Polk St. (apt. 175)
San Francisco, CA 94109
212-330-0982

ONE QUESTION PRESENTED FOR REVIEW

IN THEORY AND PRACTICE – DOES THE AMERICAN JUSTICE SCHEME PERMIT COURTS TO OPERATE ON A *DOUBLE-STANDARD* IN WHICH DIFFERENT *RULES OF LAW* ARE ONLY APPLICABLE TO PRO SE PETITIONERS?

Specifically, can the Second Circuit Court of Appeals interpretation-and-application of constitutional guarantees cancel-out all judicial mandates concerning the pro se petitioner's unqualified due process right to be advised of a government agency's claims prior to the initial start-up of an administrative hearing?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Stephen Fisher, respectfully prays that a writ of certiorari issue to review the decision of the New York Court of Appeals that dismissed petitioner's appeal as of right.

PARTIES

The caption contains the names of all parties to this proceeding. Petitioner is appearing pro se — he is not an attorney and has never studied law.

CONSTITUTIONAL PROVISIONS AT ISSUE

United States Constitution, Amendments V and XIV (Appendix pgs 12 and 13).

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1254, 1257.

DECISIONS BELOW & GOAL OF PETITION

On October 17, 2002, the New York Court of Appeals denied petitioner's motion for reconsideration (Appendix pg 2). The preceding New York Court of Appeals June 11, 2002 decision (Appendix pg 1) denied petitioner's *appeal as of right* (Appendix pg 8) – it is the Court's unique decision alone that triggered plaintiff's instant Supreme Court's petition for which the only objective is an Order directing the Court of Appeals to grant the *appeal as of right* for petitioner pro se pursuant to all statutes and case law that served as the impetus for the universal granting of *appeals as of right* for all other litigants, in identical factual circumstances, represented by attorneys.

STATEMENT OF THE CASE

The New York Department of Taxation (*hereinafter, "Tax Department"*) failed to supply petitioner with an honest statement of tax claims before the start of a 1997 administrative hearing for which the purpose was to establish petitioner's 1970s tax liabilities.

Thereafter, petitioner brought-forth hard-core, undisputed evidence that was accompanied by unimpeachable corroborating testimony in order to support his New York Court of Appeals petition requesting he be granted an appeal as of right based entirely on constitutional grounds (Appendix page 8).

When dismissing petitioner's appeal as of right; the New York Court of Appeals unqualified reasoning led to a *conclusion of law* that petitioner not being advised of the government agency's claims before -hearing was inconsequential as: "...no substantial constitutional question is directly involved" (*see decision, Appendix pg 1*) — herewith is the judicial sanctioning of a definitive legal procedure that contradicts (*i.e., destroys*) fundamental due process rights as explicitly-and-always set-forth by the New York Court of Appeals in all other cases where petitioners are represented by attorneys..

> "The hearing held by an administrative tribunal ... no essential element of a fair trial can be dispensed with ... and this means, among other things, that the party whose rights are being determined must be fully apprised of the claims of the opposing party...". Emphasis added.
>
> *Kramm v Regents* 273 NYS 2nd 413, 415 (1966)

THE "*MISSING LINK*" IN THE LOWER COURT'S DECISION

The New York Court of Appeals single, conclusory reason for dismissing petitioner's appeal as of right (*i.e., "no substantial constitutional question is directly involved"*) leaves conspicuously unresolved the underlying issue that formed the first critical building-block embedded into the core foundation of petitioner's State appeal.

> BEFORE THE JUNE 1997 ADMINISTRATIVE TAX HEARING — THE PETITIONER WAS NOT PROVIDED WITH AN HONEST STATEMENT OF THE TAX DEPARTMENT'S CLAIMS REGARDING ALLEGED PETITIONER'S 1970s TAX LIABILITIES.

In other words, the lower Court's groundless Conclusion of Law (*"no substantial constitutional question is involved"*) creates an all-encompassing aura of distinct illogicality that naturally evolves from a reality in which the same Court literally ignored undisputed evidence (*supported by unimpeachable corroborating testimony*) that proves the misinformed petitioner entered the tax hearing with no knowledge of the Tax Department's truthful claims. Herein lies petitioner's deprivation of constitutional rights.

> "The right to a fair trial before an administrative tribunal in a judicial or quasi-judicial capacity requires that the party whose rights are being determined be fully apprised of the claims of the opposing party."
>
> *2 NY Jur 2nd* The Right to Know the Opponents Claims; § 133

FACTUAL BACKGROUND

HARD-CORE, UNCONTESTED EVIDENCE PROVES THAT THE MISINFORMED PETITIONER ENTERED HIS 1997 TAX HEARING WITH NO KNOWLEDGE OF THE TAX DEPARTMENT'S TRUTHFUL CLAIMS

The Tax Department was required to provide petitioner, *before the June 1997 tax hearing*, a "Prehearing Memorandum" — in May 1997; the Tax Department gave petitioner its Prehearing Memorandum to which was attached an official computer analysis that stated petitioner's 1976 tax liabilities amounted to $28,827. Understandably, the May official analysis, *setting-forth petitioner's $28,827 tax liability*, was the crucial element of petitioner's preparation for his June hearing.

On June 20, 1997; the second (*final*) day of the tax hearing — the Tax Department submitted into evidence the Eckler Report (*so named after T. Eckler, the Tax Department's chief at-hearing expert witness*) which was another computer compilation that set petitioner's tax liabilities at $19,355 which, *in turn*, forever-after assumed the status as the only complete and official statement of petitioner's 1970s liabilities.

> "During the first day of the hearing, the ALJ directed the Department to put together a summary of petitioners' liabilities and overpayments in an attempt to clear up some of the confusion, and that document – the Eckler report – was introduced on the second (and final) day of the hearing."
>
> *December 13, 2001 New York Supreme Court, Appellate Division Decision*, Appendix pgs 5-6

SUMMARY – Uncontested Evidence Proving That It Was Impossible For Petitioner To Know The Tax Department's Honest Claims Before The Start Of The June 19/20, 1997 Tax Hearing

From Tax Department: → BEFORE HEARING, **May1997 Computer Analysis (Appendix pg 11). Supplied To Petitioner In May -and- Submitted into Evidence on June 19th (first day of hearing), *see* Transcript, Appendix pg 9).**

May 1997, Total 1976 Tax Liability: $28,827

* * *

From Tax Department: → AT HEARING, **June 20, 1997 Eckler Report (Appendix pg 11). Submitted into evidence on the second day of the petitioner's 2-day (June 19th/20th) tax hearing. Transcript, Appendix pg 10.**

June 1997, Total 1976 Tax Liability: $19,355

The June 1997 hearing was instigated by the Tax Department claims. Justifiably, the naïve petitioner walked into the June 19th hearing room with a defense strategy prepared to counteract the Tax Department's particular $28,827 claim as set-forth in the May 1997 official computer analysis that had been supplied (*to petitioner*) under the pretense of being the official statement of petitioner's 1976 tax liabilities.

The end-result of the Tax Department's methodology was that the 2nd-day-at-hearing abrupt introduction of the radically different June 20th Eckler Report is undisputable proof-positive that petitioner was given (*before hearing*) false, misleading data that would for-sure confuse petitioner's pre-hearing preparations and for-sure confuse hearing operations.

CORROBORATING TESTIMONY, *FROM AN UNIMPEACHABLE SOURCE*, UNDISPUTABLY PROVES THAT PETITIONER COULD NOT POSSIBLY KNOW THE TAX DEPARTMENT'S CLAIMS BEFORE THE 1997 TAX HEARING

After in-depth review of all evidence with Tax Department expert witnesses during the beginning hours of the June 19th hearing session — the presiding Administrative Law Judge expressed unmitigated frustration with her complete failure to understand the Tax Department's $28,827 liability claims as set-forth in official documents provided to petitioner before hearing (*and also submitted into evidence at the start of the hearing*).

> Presiding Judge: "Its frustrating. ... I cannot render a decision until I have the figures and I know what your position is. ... I don't have the documentation. ... I am confused." *June 1997 Tax Hearing, Transcript, Appendix pg 9*
>
> Presiding Judge: "Maybe you [Tax Department Attorney] have this information in your head, but I am not getting it, and I'm the one that has to write the decision." *Transcript, Appendix pg 10*
>
> Presiding Judge: "You have to take a position. You have to tell me what your position is....I am not getting this information and that's the information I need." *Transcript. Appendix pg 10*

In her own crystal-clear words — the ultimate expert, *in the person of the presiding judge*, distinctly describes a legal process in which petitioner and judge were both functioning at-first-day-of-hearing in a state of utter confusion without knowledge of the Tax Department's 1970s petitioner's tax liability claims that had precipitated the 1997 administrative hearing.

FACTS APPLIED TO THE CONTROLLING LAW

WITH THE UNDISPUTED EVIDENCE PLUS UNIMPEACHABLE CORROBORATING TESTIMONY UNQUESTIONABLY ESTABLISHING THAT PETITIONER DID NOT KNOW THE TAX DEPARTMENT'S CLAIMS PRIOR TO THE HEARING — THEN, *AND ONLY THEN*, DOES THE CONSTITUTIONAL ISSUE BECOME THE FOCAL POINT OF THE INSTANT CASE.

DOES (*OR DOES NOT*) PEITITIONER HAVE A DUE PROCESS RIGHT TO BE ADVISED OF THE TAX DEPARTMENT'S CLAIMS PRIOR TO ENTERING INTO AN ADMINISTRATIVE TAX HEARING THAT WILL DETERMINE THE AMOUNT OF PETITIONER'S TAX LIABILITIES?

Petitioner's birthright automatically provides a constitutional guarantee to know the Tax Department's claims prior to the start of an administrative hearing scheduled and conducted by the government. That is, the Tax Department clearly violated (*i.e., obliterated*) petitioner's constitutional rights when petitioner was not given a correct statement of the Tax Department claims before the hearing. Worse yet, the presiding judge substantiates a reality in which a petitioner (*and judge*) were provided with false, misleading official material that was destined to helplessly confuse the petitioner's before-hearing preparation process. Herein is an undeniable and explicit example of circumstances in which the New York Court of Appeals (and this Supreme Court) have forever ruled that all citizens, *except petitioner*, have a right to know government claims before an administrative hearing.

New York State courts define constitutional rights:

> "The first fundamental of due process is notice of the charges made. This principle equally applies to an administrative proceeding for even in that forum no person may lose substantial rights because of wrongdoing shown by the evidence but not charged. (Matter of Ruffalo, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117; Matter of Shapiro v Board of Regents, 16 N.Y.2d 783, 262 N.Y.S.2d 503, 209 N.E.2d 821; Matter of Hecht v. Monaghan, 307 N.Y. 461, 473-474, 121 N.E.2d 421, 427-428; Cole v. Arkansas, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed.644; Lloyd Sabaudo Societa v. Elting, 287 U.S. 329, 339-340, 53 S.Ct. 167, 77 L.Ed. 341.)"
>
> *Murray v Murphy* 24 NY 2nd 150, 158 (1969)

> "In *Morgan v. United States* 304 U.S. 1, 58 S. Ct. 773, 82 L.Ed. 1129, it was said in an opinion by Chief Justice Hughes:'The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know claims of the opposing party and to meet them.'"
>
> *O'Brien v Educ. Comm* 4 NY 2nd 1555 (1957)

The U.S. Supreme Court defines constitutional rights:

> "The charge must be known before the proceedings commence. ... How the charge would have been met had it been originally included in those leveled against petitioner by the [government]... no one knows. <u>This absence of fair notice as to the ... precise nature of the charges deprived petitioner of procedural due process.</u>" Emphasis added.
>
> *Matter of Ruffalo*, 390 U.S. 544, 551-552, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968)

CONCLUSION & SUMMARY

REASON FOR GRANTING THE WRIT

In the final analysis, the lower Court simply circumvented the undisputed evidence plus unimpeachable corroborating testimony which, *in turn*, indisputably established that petitioner did not know the Tax Department's claims prior to hearing — therefore, *it only stands to reason*, that constitutional rights overwhelm all issues as knowing the precise nature of the charges before-hearing is an integral part petitioner's due process rights.

> "In administrative hearings, the primary concern of the courts has been to guarantee the element of fairness which is involved in a full disclosure of charges... so that the accused may effectively prepare an adequate defense."
>
> *Greene v McElroy* 360 US 474, 79 S Ct 1400, 3 L Ed 1377 (1915)

For all citizens other than petitioner pro se; the New York Court of Appeals routinely grants an *appeal as of right* whenever only constitutional questions are involved in the case.

> "The sole question presented in the instant case is whether the judgment ... is based upon due process of law. That question involves directly and necessarily the construction of the Constitution. ... Where the question of whether a judgment is the result of due process is the decisive question upon an appeal, the appeal lies to this court as a matter of right." Emphasis added.
>
> *Valz v. Sheepshead* 249 NY 123, 127(1928)

WHEREFORE; because it is clearly established that it was impossible for petitioner to know the Tax Department's claims before the June 1997 hearing as was his constitutional right -and- because plaintiff has an inalienable right to adjudication based on Rules of Law as applied to other citizens — petitioner prays for a writ of certiorari to issue to the New York Court of Appeals which would create the opportunity to *appeal as of right* in the New York Court of Appeals so that the legal process for petitioner is conducted in accordance with the unambiguous constitutional guarantees as repetitively expressed in this Supreme Court and the New York Court of Appeals many unqualified mandates that were created-and-implemented in order to control the legal process for all citizens (*including petitioner pro se*).

Dated on the 1st day of March, 2003; at San Francisco, California.

Respectfully submitted,

Stephen Fisher, petitioner pro se
1819 Polk Street (#275)
San Francisco, CA 94109

Addendum: Constitutional rights with (*or without*) pro se status.

In a million decisions from all courts during the past 2+ centuries — nowhere, *except for the instant case*, has a judge ever stated that legal questions dealing with fair trial (*or fair hearing*) do not involve constitutional issues.

continued

For the sake of argument, assume for a moment that the pro se status is not a consideration in the unique handling of the petitioner's case. Nevertheless, petitioner has been treated in an entirely different manner than all other similarly situated persons — therefore, petitioner has established a due process / equal protection claim even though petitioner is, *in a sense*, only a class of one. *Village of Willowbrook v Olech* 528 US 562, 120 S Ct 1073, 145 L Ed 2nd 1060 (2000), *also see Sioux City Bridge Co v Dakota County* 260 US 441, 43 S Ct 190, 67 L Ed 2nd 340 (1923).

> "In an organized society, it [access to the court] is the right conservative to all other rights. It is one of the highest and most essential privileges of citizenship."
>
> *Chambers v Baltimore & Ohio R.R.* 207 U.S. 142,148, 28 S.Ct. 34, 52 L.Ed. 143 (1907)

> "The right [to access the Court] not only protects the ability to get into court, but also ensures that such access be adequate, effective and meaningful."
>
> B*ounds v Smith* 430 U.S. 817, 822, 97 S.Ct. 1491,52 L.Ed.2d 72 (1977)

Hereby, *with exacting clarity*, focus is tightly drawn onto the purpose of this petition aimed solely at achieving a New York Court of Appeals *appeal as of right* based on such constitutional issues (*i.e., right to notice of claims before hearing*) that routinely serves as the complete basis for all other litigants, *appearing with attorneys*, to be granted *appeals as of right*.

The lower Court singling-out petitioner by taking-away only petitioner's *appeal as of right* has effectively eliminated petitioners due process "access to the court".

APPENDIX

New York Court Of Appeals Decision,
June 11, 2002.....App pg 1

New York Court of Appeals Decision,
October 17, 2002 (Reconsideration) .....App pg 2

New York Supreme Court, Appellate
Division Decision, December 13, 2001.....App pg 3

Petitioner's Appeal as of Right, (to the
N.Y. Court of Appeals), Excerpts.....App pg 8

June 19/20, 1997 Administrative
Hearing Transcript, Excerpts.....App pg 9

May 1997 and June 1997 Tax
Department Reports, Excerpts.....App pg 11

U.S. Constitution, Relevant Parts,
Amendments V and XIV.....App pg 12

ENTERED ON JUNE 13, 2002

STATE OF NEW YORK,
COURT OF APPEALS

As a session of the Court, held at the Appeals Hall in the City of Albany on the eleventh day of June 2002

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

Mo. No. 590 SSD 23

In the Matter of Stephen Fisher et al.,

Appellants,

v.

Commissioner of Taxation and Finance et al.,

Respondents.

The appellants having filed a notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

s/
Stuart M. Cohen
Clerk of the Court

ENTERED ON OCTOBER 17, 2002

STATE OF NEW YORK,
COURT OF APPEALS

As a session of the Court, held at the Appeals Hall in the City of Albany on the seventeenth day of October 2002

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

Mo. No. 958

In the Matter of Stephen Fisher et al.,

Appellants,

v.

Commissioner of Taxation and Finance et al.,

Respondents.

A motion having heretofore been made herein upon the part of the appellants for reconsideration of this Court's June 11, 2002 dismissal order, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby denied.

s/
Stuart M. Cohen
Clerk of the Court

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: December 13, 2001

In the Matter of STEPHEN FISHER et al., Petitioners.

v

COMMISSIONER OF TAXATION AND FINANCE et al., Respondents.

87996

MEMORANDU,M AND JUDGMENT

Calendar Date: October 15, 2001

Before: Mercure, J.P., Spain, Carpinello, Mugglin and Rose JJ.

Stephen Fisher, San Francisco, California, petitioner pro se.

Eliot Spitzer, Attorney-General (Julie S. Mereson of counsel), Albany, for respondents.

Spain, J.

Proceeding pursuant to CPLR article 79 (initiated in this Court pursuant to Tax Law section 2016) to review a determination of respondent Tax Appeals Tribunal which, inter alia, sustained an

This CPLR article 78 proceeding follows years of administrative litigation between petitioners and the department of Taxation and Finance (hereinafter Department) over petitioners' income tax liabilities. By amended petition filed November 15, 1996, petitioners argue that the Department owes them refunds for several tax years between 1979 and 1988 which have not been appropriately applied to reduce assessed tax liabilities for 1975. 1976, and 1984, that they are entitled to a refund for 1977, and that the Department is not entitled to assess interest and penalties on petitioners' outstanding tax liabilities. Following a hearing, the Appeals Division, in a detailed decision, sustained the Department's assessment of taxes, penalties and interest and denied the petition. Respondent Tax Appeals Tribunal affirmed. Proceeding pro se, petitioner Stephen Fisher, (hereinafter, petitioner) now challenges that determination and seeks a new hearing,

Petitioner focuses on two points. First, he contends that any penalties and interest assessed for petitioner's late filing and payment of income taxes should be abated pursuant to Tax Law section 3008, which provides for such abatement when a taxpayer's deficiency or late payment is due to "unreasonable error or delay" by an agent of the Department in the performance of ministerial and managerial acts (Tax Law section 3008[a]). Petitioner's reliance on that statue is misplaced inasmuch as the statute's application is expressly limited to interest accruing with respect to deficiencies, taxes or payments for taxable years commencing after August 7, 1992 – the statute's effective date (see, L 1992, ch 770, section 2)

– and all of the tax years in question here precede that date. 1

Next, petitioner contends that petitioners are entitled to a new hearing because the Department's reliance on "helplessly confusing data" and its submission of new data and analyses during the hearing without giving him sufficient time to review the data with his attorney and his expert witness deprived petitioners of due process. While we do not doubt petitioner's characterization of the Department's documentation as confusing and recognize that even the presiding Administrative Law Judge was struggling to understand the calculations provided, we conclude that petitioners' due process rights were no violated inasmuch, in our view, they were afforded a full and fair opportunity to prepare a defense and present evidence (see, Matter of Scott v Wetzler, 195 AD2d 905, 908).

Respondent Commissioner of Taxation and Finance acknowledges that there was confusion among the Department staff and petitioner about the computation of interest on petitioner's tax deficiencies and the application of overpayments to their liabilities. During the first day of the hearing, the ALJ directed the Department to put together a

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1. To the extent that petitioner also relies on Tax Law Section 3008 (b), which authorizes the abatement of penalties and interest attributable to "erroneous advice furnished to the taxpayer in writing by an officer or employee of the [Department]", we also find that none of petitioner's claimsare premised on written advice requested after the effective date of that provision (see, L 1992, ch 770 section 23 [rendering Tax Law section 3008 applicable to advice requested after December 1, 1992]).

"summary" of petitioners' liabilities and overpayment in an attempt to clear up some of the confusion, and that document – the Eckler report – was introduced on the second (and final) day of the hearing.

Petitioner disputes the Department's characterization of the Eckler report as a mere summary of previously submitted evidence, calculations and a different balance, it necessarily was new information and should not have been introduced into evidence at the eleventh hour. Furthermore, petitioner argues that it was unfair to permit the Department an overnight period to compile the report, but then permit petitioner only one hour to review it and to consult with his attorney by telephone prior to his opportunity to cross-examine the report's creator.

The Commissioner counters that the Eckler report was based upon data available to petitioner prior to the hearing and, although the calculations differed in the report, the changes resulted from a recomputation of interest which actually enured to petitioners' benefit. Significantly, petitioner fails to directly contest this allegation or demonstrate how petitioners were prejudiced by the introduction of the Eckler report. Moreover, although petitioner's frustration at the hearing with the time allocated for reviewing the report is understandable, we note that he was given the opportunity to submit posthearing memoranda after consulting with his attorney and his expert witness. Under the circumstances, we discern no violation of due process and confirm the Tribunal's determination (see, Matter of Mara v Tax Appeals Tribunal of State of N.Y., 204 AD2d 818, 820; see also, Matter of Tyler v New York Comr. Of Motor Vehicles, 284 AD2d 645, 646-647).

Mecure, J.P., Capinello, Mugglin and Rose, JJ., concur.

ADJUDGED that the determination is confirmed without costs.

ENTER:

s/
Michael J. Novack
Clerk of the Court

Excerpts from petitioner's *Appeal as of Right*:

"COURT OF APPEALS, STATE OF NEW YORK

STEPHEN FISHER and NANCI FISHER,
Petitioners.

-against-

Commissioner of Taxation and Finance, and
Tax Appeals Tribunal of the State of New York,
Respondents.

at page 2

"The instant appeal only involves the singular question of whether judgment was the result of due process.

THE ONE (1) QUESTION ON APPEAL

Was petitioner denied due process when the Tax Department failed to provide petitioner with truthful, intelligible charges prior to the start of the administrative hearing aimed at establishing petitioner's tax liabilities?

at page 7

"CONCLUSIONS AND SUMMARY

Petitioner must be granted a new hearing pursuant to rudimentary due process rules mandating that government charges must be known before a hearing commences. How the charge would have been met had it been originally included in those leveled against petitioner by the government—no one knows. That is, the absence of fair notice as to the precise nature of the charges deprived petitioner of procedural due process." *Matter of Ruffalo, supra.* 390 U.S. at 552, 88 S.Ct. at 1224.

Dated: March 31, 2002

Stephen Fisher, petitioner pro se

EXCERPTS FROM TRANSCRIPT OF PETITIONER'S JUNE 19 & 20, 1997 TAX HEARING HELD BY THE NEW YORK DIVISION OF TAX APPEALS IN TROY, NEW YORK

June 19, 1997 Hearing Transcript, page 120

"ALJ FAULKNER: ...Mr. Eckler [Tax Department's expert witness], I've handed you a document which has been marked as Division's Z. If you'll take a few minutes to look at it. Do you recognize this document?"

"Mr. Eckler: Yes. This is what would be printed out from the SPERRY system for assessment A7805033541."

June 19, 1997 Hearing Transcript, page 182

"ALJ FAULKNER: ...The SPERRY computer by itself doesn't hop me because I don't know how much interest accrued during that whole period of time. I don't see it in any document, so I don't know how the refunds were applied. According to the CARTS document, I don't know how that compares to what liabilities were lited and the interest that accrued that whole period of time. And I am confused."

June 19, 1997 Hearing Transcript, page 190

"ALJ FAULKNER: ...It's frustrating, I cannot render a decision until I have the figures and I know what your position is. ... I don't have the documentation."

"You [Tax Department Attorney Dix] are telling me, 'Trust us. Trust us. It's been node." I can't write a decision on, I'm sure you're doing in. How can I say that when, in fact, we keep coming up with new numbers."

June 19, 1997 Hearing Transcript, page 191

"ALJ FAULKNER: ... Maybe you [Tax Department Attorney Dix] have this information in your head, but I am not getting it, and I'm the one that has to write the decision."

June 19, 1997 Hearing Transcript, page 192

"ALJ FAULKNER: ...You [the Tax Department] have to take a position. You have to tell me what your position is..."

"That is what I am telling you. I am not getting this information and that's the information I need."

June 20, 1997 Hearing Transcript, page 256

"ALJ FAULKNER: ...Mr. Eckler, you have a document in front of you that has been marked Division's Exhibit EE. Can you tell me if you recognize it? Can you tell me what this document is?

"MR. ECKLER: It is an accounting starting with the tax year 1975 and listing all of the overpayments that the Department found to be due to Mr. And Mrs. Fisher, and a computation of the balance due based on the application of the overpayments to their liabilities."

Condensation of May 1997 Official Tax Department Computer Report Provided To Plaintiff In May & Submitted Into Evidence At Start Of June 19/20, 1997 Tax Hearing

TAXPAYER NAME	**FISHER-STEPHEN**
ASSESSMENT	**BALANCE 28,827**

==========

Condensation of June 20, 1997 Official Tax Department Computer Report Submitted Into Evidence During The Second (Final) Day Of Administrative Tax Hearing

STEPHEN FISHER	
ACCOUNTING TAX LIABILITY	
BALANCE 6/20/97	**$19,355**

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

- Amendment V
- Amendment XIV (Section 1)

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.